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| <b>TRANSMITTAL FORM</b><br><br>(to be used for all correspondence after initial filing) | Application Number   | 10/710313              |           |
|   | Filing Date          | 07/01/2004             |           |
|   | First Named Inventor | COLBY                  |           |
|   | Art Unit             | 3671                   |           |
|   | Examiner Name        | KOVACS                 |           |
| Total Number of Pages in This Submission  | 5                    | Attorney Docket Number | 6504-0401 |

| ENCLOSURES (Check all that apply)  |   |   |
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| Remarks  |   |   |

| SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT |   |          |        |
|--|---|----------|--------|
| Firm Name                                  | Chabot & Associates   |          |        |
| Signature                                  |  |          |        |
| Printed name                               | Ralph D. Chabot   |          |        |
| Date                                       | 04/26/2005  | Reg. No. | 39,133 |

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APR 26 2005

Attorney Docket No: 6504-0401

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: COLBY  
Serial No: 10/710313  
Filed: 07/01/2004

Examiner: KOVACS, Arpad F  
Art Unit: 3671

Title: METHOD FOR HARVESTING

**APPLICANT'S REQUEST TO WITHDRAW OFFICE ACTION DATED 04/13/2005**  
**MPEP §706.07(d)**

**VIA FAX: (703)872-9306**  
Commissioner of Patents and Trademarks  
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SIR:

**INTRODUCTION**

For the reasons presented below, Applicant requests the Office Action made Final dated 04/13/2005 be withdrawn pursuant to MPEP §706.07(d) as it is premature and can not be fully responded to. Applicant further requests a telephonic interview with the Examiner pursuant to MPEP §713.09 to address any outstanding issues prior to responding to an Office Action made Final.

No amendments have been made to the pending application. The purpose of this submission is to identify the reasons why Applicant is not able to appropriately respond to the pending Office Action made Final.

## REMARKS

The issues will be addressed in the order presented in the 04/13/2005 Office Action.

### 1. Drawings Objection

The Examiner has objected to the original drawings on the basis of 37 CFR §1.83(a), taking the position that every feature of the invention specified in the claims must be illustrated and more specifically, that the terms "floodlights" and "180 degrees" appearing in claims 1, 3-6, 8, 11, 12 must be shown or the features canceled from the claims.

Applicant respectfully disagrees. Pending claim 1, which has been allowed by the Examiner is a method claim. According to MPEP §601.01(f):

"It has been USPTO practice to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113."

The submitted drawings evidence examples of Applicant's invention. The incorporation of floodlights can be clearly understood by the reader and therefore a drawing is not necessary for an understanding of this feature.

With respect to the Examiner's contention that only 90 degrees is shown and described in the Detailed Description of Drawings, this is incorrect. Substantially 180 degree displacement is clearly illustrated in Fig. 19. In the Detailed Description of Drawings Section, Fig. 19 "illustrates the movement of the wing conveyors relative to the main body of the unit". In the Detailed Description of the Preferred Embodiment Section at paragraph [0064] it states: "Fig. 19 illustrates how rotating arms 14 displace the entire conveyor system over the main body of unit 10 until it is on the side of the vehicle opposite the edge of field B." Together, Fig. 19 and this passage clearly support an understanding to a reader that the conveyor is displaced substantially 180 degrees.

Further, the pending drawing rejection was only brought to the Applicant's attention for the first time in the Examiner's Office Action Made Final. Applicant has not had an opportunity to discuss the situation, through a telephonic interview, with the Examiner.

## 2. Claim Objections

Applicant notes that claims 1 & 2 have been allowed in the Office Action Summary (PTOL-326) yet are objected to by the Examiner. Claims 1 and 2 are objected to because the Examiner suggests Applicant use the term "pair of" in front of "conveyors", presumably in subparts d, e, g, and h of claim 1. A telephonic interview is requested to confirm.

## 4. Claim Rejections

The Examiner has cited US Pat. No. 2,699,877 issued by Huston as the ground for rejecting claims 2-12 on the ground of anticipation. It is confusing that the Examiner rejects claim 2 on the basis of Huston but allows claim 2 in the Office Action Summary (PTOL-326).

The Examiner purportedly cites various passages of Huston as grounds for rejection. However, Applicant is unable to identify the relevant passages since they contain different disclosure or do not exist at all. It is believed the Examiner may have wished to cite a different reference. In any case, it is impossible for the Applicant to properly respond to the Examiner's grounds of rejection when those grounds can not be properly identified.

The following are the specific passages cited by the Examiner in referring to Huston:

### A. The Examiner for his rejecting claims 3 & 9 identifies:

Pair of conveyors (80 & 82).

*part no. 82 does not exist in the Huston specification.*

Sufficient length to span multiple rows (col. 4, ln11). *No such statement.*

Col. 4, ln7-14 reads: "*The empty crate conveyor element is supported by means of bent columns 43, the bottoms of which are attached by means of a hinged joint 44 to a plate 45 on the main portion of the wings. At the upper ends the columns are joined by a hinged joint 46 to a plate 47 which in turn mounts channels 48 and 49 at the forward and rear sides of the empty crate conveyor as seen to good advantage in Figures 6 and 14.*"

Arms capable of displacing conveyor over the vehicle (col. 3, ln 68).

*No such statement.*

Col. 3, ln 68 reads: "*Conveyors on the wings*".

The Examiner also makes the statement:

"In re claim 9, it is noted that a conveyor belt system is called for, therefore the system of the prior art is capable of being a conveyor belt system or any other conveying means system".

*The Examiner is incorrect. The claim elements should be interpreted in view of the specification. Inference that a claim term is capable of being any prior art system is believed to be improper.*

B. The Examiner for his rejecting claims 7 & 9 identifies:

A pallet conveyor (51, as shown fig 8 parallel to the pair of conveyors).

*Parts 51, seen on both sides, are the pair of conveyors rather than a separate conveyor, distinct from the pallet conveyor..*

Sets of tires (12).

*Part 12 is described in Huston as wing (Col 3, ln 41 & 48) and not tires.*

C. The Examiner for his rejecting claim 10 identifies:

A workstation & foldable platform (col. 4, ln 47-51). *No such statement.*

Col 4, ln 47-50 reads: "*The loading platform extends rearwardly of the platform and is composed of slats adapted to receive the cut heads of lettuce or other crops as they are picked from the ground and placed upon the harvester.*"

### CONCLUSION

For the reasons presented above, the Examiner's Office Action dated 04/13/2005 should be withdrawn. In any case, Applicant requests a telephonic interview pursuant to MPEP §713.09 to confirm the proper corrections to the objections raised regarding claim 1.

Respectfully submitted,

Dated: April 26, 2005



Ralph D. Chabot, Reg. No. 39,133  
Attorney for Applicant